

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
FOURTH REGION**

TRANSCONTINENTAL GAS PIPE LINE  
CORPORATION<sup>1</sup>

Employer

and

Case 4–RC–20797

INTERNATIONAL BROTHERHOOD OF  
ELECTRICAL WORKERS LOCAL UNION 94,  
AFL-CIO<sup>2</sup>

Petitioner

**REGIONAL DIRECTOR’S DECISION AND  
DIRECTION OF ELECTION**

The Employer, Transcontinental Gas Pipe Line Corporation, is an interstate transporter of natural gas utilizing a pipeline running through 12 states from the Gulf Coast region to New York.<sup>3</sup> The Petitioner, IBEW Local 94, filed a petition with the National Labor Relations Board under Section 9(c) of the National Labor Relations Act seeking to represent a state-wide unit of the Employer’s “physical employees” employed at the following five facilities in two districts in New Jersey: Carlstadt, Linden, Neshanic Station, Lawrenceville, and Mt. Laurel.<sup>4</sup> The Employer contends that this unit is inappropriate and that the smallest appropriate unit would encompass all employees in the Employer’s Princeton Division, which includes six facilities in Pennsylvania in addition to the petitioned-for New Jersey locations. The Petitioner’s proposed unit would consist of about 58 employees, while the Employer’s proposed unit would include approximately 82 employees. A hearing officer of the Board held a hearing, and the parties filed briefs with me.

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<sup>1</sup> The Employer’s name appears as amended at the hearing.

<sup>2</sup> The Petitioner’s name appears as amended at the hearing.

<sup>3</sup> The Employer is a subsidiary of Williams Gas Pipeline, LLC, which also operates other gas pipelines and storage facilities. The Employer’s name has changed several times as result of corporate restructuring. The company was called “Transco” until 1995. The Employer uses the name “Williams Companies, Inc.” for payroll purposes.

<sup>4</sup> Specifically, the petition seeks a unit of employees in the following classifications: Technician 1, Technician 2, Technician 3, Technician 4, Operations Technician, Senior Operations Technician, Specialist, and Senior Specialist, excluding the classifications of District Administrator 1, District Administrator 2, Senior District Administrator, and District Administrative Specialist. The Employer agrees with the Petitioner as to the composition of the unit.

I have considered the evidence and the arguments presented by the parties concerning the appropriateness of the petitioned-for unit. As discussed below, I have decided not to direct an election in either of the units proposed by the parties. Rather, I have concluded that the petitioned-for unit is inappropriate and that district-wide units are the smallest appropriate units for collective bargaining. Accordingly, I have directed separate elections for physical employees in the Neshanic Station District and the Carlstadt District.

To provide a context for my discussion concerning the appropriateness of the unit, I will first present an overview of the Employer's operations. Then, I will review the factors that must be evaluated in determining whether a multi-location unit that is less than company-wide is appropriate for purposes of collective bargaining. Finally, I will present in detail the facts and reasoning that support my conclusion.

## **I. OVERVIEW OF OPERATIONS**

The Employer operates approximately 45 monitoring stations for the pipeline, including the facilities encompassed by the petition. The pipeline operations are divided into four geographical subdivisions. The Cypress Division is responsible for pipeline in Texas, Louisiana, and Mississippi; the Atlanta Division oversees pipeline in Georgia, Alabama, and South Carolina; the Charlottesville Division oversees North Carolina, Virginia, and Maryland; and the Princeton Division consists of Pennsylvania, New Jersey, and New York. There are no monitoring stations in New York; New Jersey stations oversee the pipeline there.

The Princeton Division's southern boundary is the Pennsylvania/Maryland border. Initially, the pipeline moves north from a station near the border in Delta, Pennsylvania to a station in Frazer, Pennsylvania. The pipeline then travels northeast to the Lawrenceville, New Jersey station, where it splits into different lines. Some of these lines return to Pennsylvania, while others continue through New Jersey and end in New York. The natural gas that returns to Pennsylvania flows through the remaining four Pennsylvania stations to a storage facility in Potter County, Pennsylvania, which is in the north central part of the state.

The New Jersey locations are grouped into two districts, Carlstadt and Neshanic Station. Within the Carlstadt District, there are two facilities, Carlstadt and Linden. The Neshanic Station District consists of three facilities, Neshanic Station, Mt. Laurel, and Lawrenceville. The Pennsylvania facilities are located in Delta, Frazer, Wharton, Benton, Salladasburg, and Bear Creek, but the record does not indicate how these facilities are grouped into districts.

The Employer's corporate offices are located in Tulsa, Oklahoma and Houston, Texas. The corporate headquarters in Tulsa provides administrative and support functions for the pipeline and houses the Human Resources, Information Technology, Financial, and Payroll departments. The Houston office oversees gas pipeline operations and provides centralized engineering and support services. The Senior Vice-President of Pipelines overseeing the Princeton Division, Randy Bernard, works at the Houston office, which also has a small Human Resources Division. Mark Sparks, the Employer's labor relations representative for the Princeton

Division, works in the Human Resources Division in Houston. Mario DiCocco is the Director of Operations for the Princeton Division, and his office is in Princeton, New Jersey. The Princeton office also houses safety and administrative employees and engineers.

Each district is supervised by a District Manager (DM). All DMs within the Princeton Division directly report to DiCocco. The DM in the Carlstadt District is Rich Hollmann. Three Assistant District Managers (ADMs), Ken Philhower, Tom Gatto, and Joseph Sacko, also work in the Carlstadt District and report to Hollmann. Philhower and Gatto work in the Carlstadt facility, and Sacko is the highest-ranking official at the Linden facility.

The DM in the Neshanic Station District is John Cervenak, and the ADMs are Steve Dunkle, Bobby Hancock, Robert Harding, and Russell Markowski. Dunkle and Hancock work with Cervenak at the Neshanic Station facility; Dunkle is responsible for the compressor station, and Hancock is in charge of the pipeline facilities. Harding and Markowski are the highest-ranking officials at the Mt. Laurel facility and the Lawrenceville facility, respectively.

In the Carlstadt District, there are approximately 34 physical employees, 21 at the Carlstadt facility and 13 at the Linden station. The Neshanic Station District has approximately 24 physical employees. About six of them work at Mt. Laurel, but the record does not indicate how the others are apportioned between the Neshanic Station and Lawrenceville facilities.

Physical employees including employees in the petitioned-for classifications staff the Employer's stations along the pipeline. They perform field work in crews monitoring the pipeline in their designated boundaries. The field crews check regulators that control pipeline pressure and maintain the pipeline, facilities, and meter stations. The Carlstadt facility has a Liquid Natural Gas (LNG) plant where gas is converted from a vapor to liquid form and then stored. If an area needs more gas or the pipeline needs more pressure, the liquid gas is converted back to vapor and put back in the pipeline. At both the Neshanic Station and Carlstadt facilities, the employees maintain compressors.

## **II. FACTORS RELEVANT TO DETERMINING THE APPROPRIATENESS OF THE UNIT**

The Board's procedure for determining an appropriate unit under Section 9(b) is first to examine the petitioned-for unit. If that unit is appropriate, then the inquiry ends. *Dezcon, Inc.*, 295 NLRB 109, 111 (1989). If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative unit proposals of the parties. See, e.g., *Bartlett Collins Co.*, 334 NLRB 484 (2001); *Overnite Transportation Co.*, 331 NLRB 662, 663 (2000). The Board generally attempts to select a unit that is the smallest appropriate unit encompassing the petitioned-for employee classifications. See, e.g., *R & D Trucking, Inc.*, 327 NLRB 531 (1999); *State Farm Mutual Automobile Insurance Co.*, 163 NLRB 677 (1967), *enfd.* 411 F.2d 356 (7<sup>th</sup> Cir. 1969). It is well settled that the unit need only be *an* appropriate unit, not the most appropriate unit. *Morand Brothers Beverage Co.*, 91 NLRB 409, 419 (1950), *enfd.* on other grounds, 190 F.2d 576 (7<sup>th</sup> Cir. 1951). The Board's declared policy is to consider only

whether the unit requested is an appropriate one, even though it may not be the optimum or most appropriate unit for collective bargaining. *Black & Decker Manufacturing Co.*, 147 NLRB 825, 828 (1964).

While a single facility unit is presumptively appropriate, there is no such presumption in situations such as the instant case, where the petitioner seeks to represent employees at multiple facilities. *Hazard Express, Inc.*, 324 NLRB 989 (1997); *J&L Plate, Inc.* 310 NLRB 429 (1993); *Capital Coors Co.*, 309 NLRB 322 fn. 1 (1992); *Bowie Hall Trucking*, 290 NLRB 41, 42 (1988). In a multi-facility context, the Board evaluates whether the employees at the respective facilities possess a sufficient community of interest to warrant their inclusion in a single bargaining unit by considering the following criteria: (a) similarity in employee skills, duties, and working conditions; (b) employee contact and interchange and functional integration; (c) centralized control of management and supervision; (d) geographical separation of facilities; and (e) bargaining history. *Bashas', Inc.*, 337 NLRB 710, 711 (2002); *Alamo Rent-A-Car*, 330 NLRB 897 (2000); *Macy's West Inc.*, 327 NLRB 1222, 1223 (1999); *Bowie Hall Trucking*, supra.<sup>5</sup>

### **III. FACTS**

#### *Employee Skills, Duties, and Working Conditions*

Employees' education, skills, and duties are generally the same at all the facilities within the Princeton Division. The record does not indicate whether there are any differences in these respects between employees in the Princeton Division and employees in other divisions.

All employees are cross-trained for both field and plant work. Employees that work at the Carlstadt facility rotate from plant work to field work depending on the status of plant activities.<sup>6</sup> Field crews work from 7:00 a.m. to 3:30 p.m. Monday through Friday. When working in the plant, the day shift is from 7:00 a.m. to 7:00 p.m., and the night shift is from 7:00 p.m. to 7:00 a.m.

Employees are all paid based on salary ranges set by corporate headquarters. Employees working at facilities in certain geographical regions where the cost-of-living is high receive a wage differential of approximately five percent beyond their base salary. These facilities include

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<sup>5</sup> No party contends that the Employer is a public utility or that a systemwide unit of the Employer's employees is appropriate. In this regard, the Board has held that the optimum bargaining unit for public utilities is systemwide. *Verizon Wireless*, 341 NLRB No. 63 (2004); *Baltimore Gas & Electric Co.*, 206 NLRB 199, 201 (1973). The Board has, however, also recognized that less than systemwide units may be appropriate where: the employees requested have no recent history of bargaining on a broader basis; the proposed unit encompasses a distinct administrative or geographic subdivision of the employer's operations; the employer vests substantial autonomy in supervisors at the unit level; and no union seeks representation in a larger unit. *Texas Electric Service Co.*, 261 NLRB 1455, 1458 fn. 13 (1982).

<sup>6</sup> During the process of liquefying vapor into gas, eight employees work in the plant. When the location is in a "turn around period," the plant shuts down for a set amount of time and only four employees work there.

Frazer, Pennsylvania and all of the New Jersey facilities. Employees at various facilities in Virginia, Maryland, and Washington also receive this differential.

The Employer offers all employees the same holidays, paid time off, pension plan, and health and life insurance. Employees in the Princeton Division have similar lunch schedules and break times. The Employer issues identification badges to all employees allowing access to different facilities. All employees fill out electronic times cards on the Employer's Intranet site.

### *Management and Supervision*

The DM and ADM are in charge of the day-to-day operations at their facilities. If employees are sick or need time off for other reasons, they call their DM for approval. The DM also approves all vacation requests from employees in his district. Employee Joseph Schwab testified that he submits vacation requests to his DM and requests for days off to his ADM. The Employer maintains an "Open Door" policy for dispute resolution, which permits employees to report problems directly to their DM, ADM, DiCocco, or an "800" number at the Human Resources Department. Employees report unsafe working conditions to their DM or ADM. The DM and ADM also approve overtime.

The Employer's corporate-wide labor relations policies emanate from its Tulsa and Houston offices. The Human Resources Department centrally determines personnel policies and issues job descriptions. The same job classification scheme is used in each of the facilities. The Human Resources Department posts job openings at all of the Employer's facilities on the Employer's Intranet site, and any employee can bid on these openings. The DM for the district where the facility is located reviews the applications and conducts face-to-face interviews with suitable candidates. In the Princeton Division, the DM makes hiring recommendations to DiCocco, and DiCocco testified that he usually "rubber stamps" the DM's choice for the position and sends the information to the Human Resources Department for processing.

The DM or ADM at each facility oversees employee performance. The Employer's Human Resources Department creates employee appraisal forms, which are used throughout the company. The DM and ADM prepare the appraisals and in conjunction with the appraisals, recommend promotions. Promotions are based on a company-wide Operations Development Plan (ODP), under which employees must accomplish prescribed skill blocks to earn points to progress through the job classifications, and they are paid based on their job classification. DiCocco must approve promotions, but he testified that he merely ensures that the employee has earned the appropriate number of points to be promoted to a new classification. Thereafter, the recommendation is sent to the Human Resources Department for final approval. The DM may initiate and recommend discipline or discharge of employees, but discharge recommendations must be approved by the Princeton Division's Director of Operations, Mario DiCocco, and in some cases by the corporate Human Resources and Legal Departments.

The DM and ADM at each facility are in charge of preparing preliminary budgets, and DiCocco reviews them and designates funds for each facility based on a pool of money designated by corporate headquarters. Vice President of Operations Randy Bernard has final budgetary approval. Funds are not typically transferred between facilities. Generally, if a

district or individual facility needs equipment or supplies, it will purchase them and scan the invoice into the company computer system to be paid from Tulsa. Different authorization is needed for different types of purchases. The Employer's Purchasing Department in Houston implements major equipment and bulk purchases throughout the pipeline system, and the Employer has a company-wide inventory account for certain purchases. The DM or DiCocco can authorize smaller purchases. Facilities generally use local vendors and ask for employee input on cost-saving measures.

DiCocco regularly visits each facility within the division on at least a monthly basis. During these visits, DiCocco meets with groups of employees to discuss various issues. DiCocco also may speak to individual employees about their concerns. Schwab testified that he recently had a personal discussion with DiCocco at the Neshanic Station facility about wages and budgets. DiCocco also has some meetings with all employees in a district.

#### *Employee Contact and Interchange and Functional Integration*

Each district in the Princeton Division is responsible for a particular segment of the pipeline. For example, the Carlstadt district oversees pipeline from Chatham, New Jersey to New York City. None of the employees in New Jersey are responsible for pipeline in Pennsylvania or vice versa.<sup>7</sup>

The Princeton Division only employs one operator for heavy equipment such as mowing tractors and backhoes. This employee, an Operations Technician, travels from site to site for different projects. DiCocco testified that this traveling occurs "quite a bit" but did not provide any details as to how often or where it occurs.

Certain technical employees also have contact at times with employees in various facilities in the Princeton Division. Technical Specialists in the automation field have regular e-mail contact with automation specialists at different facilities. One of them, a leadperson, travels to different facilities. The Employer also has a division-wide training program for automation employees, but no employees have participated in this program in the last few years. DiCocco testified that Operations Technicians previously classified as Welders and Telecom Measuring employees also work at different locations throughout the Princeton Division.<sup>8</sup> The record does not indicate, however, how many employees are in these classifications or how frequently they travel to other locations. It also does not indicate at which facilities these employees are stationed or where they travel.

Employees from different facilities and districts may be temporarily assigned to the Employer's annual Recoat Program. Pursuant to this program, a Princeton Division crew, including a team leader, an equipment operator, and three or four technicians, physically inspects the pipeline. If the inspection reveals problems, the employees may strip, sandblast, and recoat the pipeline as needed. Currently, the crew consists of the heavy equipment operator working

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<sup>7</sup> The record is not clear as to whether each facility in a district is responsible for a particular section of pipeline or whether all facilities in a district jointly oversee all of that district's pipeline.

<sup>8</sup> The Employer recently changed various job titles to those set forth in the petition.

out of Frazer, Pennsylvania, another employee from the Frazer facility, and an employee from the Carlstadt, New Jersey facility. Two more employees are expected to be added to the team. The project began in March 2004 and ends in October.

Employees may also be temporarily transferred to various locations throughout the pipeline to work on construction projects. Employee Michael Ferrante testified that he worked on two temporary construction projects inspecting pipe six and seven years ago in Panama City, Florida. The assignment was voluntary, and while he reported each day to a supervisor in Florida, he also continued to report to his DM in Carlstadt, New Jersey and call him with questions.

Occasionally, if the Employer does not have enough local employees or equipment to complete a job, employees from other areas of the pipeline come to work in New Jersey until the job is finished. Usually, the shortages occur because of new construction projects or problems on the pipeline. Ferrante testified that in his 26 years of working at the Carlstadt facility, he worked in Pennsylvania three times. On one occasion, he worked on an asbestos abatement inspection for about a week. Another time he picked up a piece of pipe, and his third assignment was to remove a valve that was needed at his location and later return it. These two assignments each lasted about eight hours. Ferrante's wage rate did not change when he worked in Pennsylvania. He does not recall an employee from Pennsylvania ever working at the Carlstadt facility during his tenure of employment.

Some employees have permanently transferred between facilities, districts, and divisions. Technician Kevin Edler transferred from Neshanic Station to Benton, Pennsylvania for personal reasons. Similarly, Glen Boyd worked at Neshanic Station and transferred to the Wharton, Pennsylvania facility for personal reasons. Dennis Pecalla transferred from Neshanic Station to Pine Needle, North Carolina, and Jeff Long transferred from Frazer, Pennsylvania to Lawrenceville, New Jersey, both for unspecified reasons. Finally, Schwab accepted a voluntary transfer from Carlstadt to Neshanic Station because Neshanic Station was relatively understaffed. Supervisors have transferred both within the Princeton Division and to and from other divisions.

Employees also receive training throughout the course of their employment. The Employer generally conducts training sessions for all employees in a district, but sometimes limits it to employees in a specific facility. Telecom Measurement employees from the entire Princeton Division have had common meetings, but the record does not indicate how frequently. Ferrante, a Carlstadt employee, testified that he has attended meetings with Linden employees, and Schwab testified that approximately one month ago, he participated in a company-wide conference call concerning allocation of budget for salary increases. Neither of these employees has attended any meetings or training sessions with employees from Pennsylvania.

### *Geographical Proximity*

The Princeton Division facilities cover a wide area in Pennsylvania and New Jersey. In the Neshanic Station District, the Mt. Laurel station is 33 miles south of the Lawrenceville facility, which is about 21 miles south of Neshanic Station. In the Carlstadt District, the

Carlstadt facility and the Linden facility are about 21 miles apart. Across the two New Jersey districts, the closest facilities are Linden and Lawrenceville, 37 miles apart, while the farthest stations, Carlstadt and Mr. Laurel, are 83 miles apart.

In Pennsylvania, the Frazer facility is about 57 miles north of Delta. The next closest facility is Bear Creek, approximately 110 miles northwest of Frazer. The remaining three Pennsylvania stations, Benton, Salladasburg, and Wharton, are approximately 60 to 70 miles apart from each other. The Wharton facility is about 290 miles from Frazer and 250 miles from Delta.

The Frazer, Pennsylvania facility is about 45 miles from the Mt. Laurel station, the nearest New Jersey facility. The farthest facilities from each other in the Princeton Division, Wharton, Pennsylvania and Linden, New Jersey, are about 300 miles apart.

### *Bargaining History*

There is no bargaining history for any of the employees in the petitioned-for unit.

## **IV. ANALYSIS**

I find that the Petitioner's proposed unit is inappropriate. A unit comprised of employees at all five New Jersey facilities does not conform to any of the Employer's established administrative groupings, and there are no management officials for the New Jersey facilities that do not also oversee the Pennsylvania facilities. Moreover, the employees across the state have no separate identity. While they are paid a five percent wage differential, this differential is based on the state's cost-of-living, and it also applies to the Frazer, Pennsylvania facility as well as other facilities operated by the Employer. Employees in the Carlstadt district do not have a significant amount of contact or interchange with employees in the Neshanic Station district. Thus, New Jersey employees do not have a community of interest that is distinct from employees in the Pennsylvania facilities. *Acme Markets, Inc.*, 328 NLRB 1208, 1209 (1999). Additionally, a statewide unit would significantly expand the geographic breadth of the unit.

Rather, the record demonstrates that the two district-wide units in New Jersey are the smallest appropriate units for collective bargaining. These units conform to the Employer's administrative structure, and both districts have a DM who administers operations at all facilities in the district. The DMs have significant autonomy in that they oversee employee performance, screen and recommend applicants for hire, and along with ADMs approve vacation and other time off. They also play a significant role in discipline, although discharges must be approved at higher levels. DMs and ADMs additionally prepare budgets for their facilities and have some limited purchasing authority. Moreover, the Employer conducts training sessions at district-wide meetings where all employees in the district are in contact, and DiCocco also conducts some meetings for all district employees. In these circumstances, I find that there is a sufficient community of interest among employees in each district to find district-wide units appropriate. *Verizon Wireless*, 341 NLRB No. 63, slip op., p. 3 (2004); *Capital Coors Co.*, 309 NLRB 322



(1992); *L'Eggs Products, Inc.*, 236 NLRB 354, 412-415 (1978), *enfd.* in pertinent part, 619 F. 2d 1337 (9<sup>th</sup> Cir. 1980); *White Cross Discount Center, Inc.* 199 NLRB 721 (1972).

Although the division-wide unit proposed by the Employer conforms to an administrative grouping and may also be appropriate, employees in Pennsylvania and New Jersey do not share such a strong community of interest as to preclude a finding that district-wide units are appropriate. Other than DiCocco, there is no common supervision; day-to-day labor relations are administered at the district-wide or individual facility level. There is no extensive contact or interchange between employees in the two states. While New Jersey and Pennsylvania employees occasionally work together on temporary Recoat projects, this contact appears to be limited to a few employees, and employees may also handle temporary assignments in divisions other than the Princeton Division. Some technical employees have performed work throughout the Princeton Division, but the record does not indicate how many employees are involved or how frequently they have done so. In this regard, in *New Britain Transportation Co.*, 330 NLRB 397, 398 (1999), the Board emphasized that a party attempting to establish significant temporary interchange needs to present detailed and specific evidence as to the extent of the involvement so that the amount of interchange can be placed in context.<sup>9</sup> See also *Cargill, Inc.*, 336 NLRB 1114 (2001). Moreover, some of these temporary assignments have been to facilities outside of the Princeton Division. Additionally, while there have been several permanent transfers between facilities, these transfers often have resulted from accommodations to employees' personal needs and sometimes have been to facilities outside of the Princeton Division.<sup>10</sup> Although the employees have common skills and duties across the Princeton Division, it is likely that these skills and duties are common throughout the Employer's facilities along the pipeline, inasmuch as the Employer uses corporate-wide job descriptions. Finally, the extensive distance between some facilities in New Jersey and Pennsylvania militates strongly against a division-wide unit. The Pennsylvania facilities are widely scattered, and the facilities in the northwestern portion of the pipeline are as much as 300 miles away from the most distant New Jersey location. See *Bowie Hall Trucking, Inc.*, *supra*; *Esco Corp.*, 298 NLRB 837, 839-840 (1990). In comparison the farthest facilities from each other in a single district in New Jersey are Neshanic Station and Mt. Laurel, about 54 miles apart. In these circumstances, I find that units limited to employees in each of the Employer's two districts are the smallest appropriate units for the purposes of collective bargaining.<sup>11</sup>

The Petitioner has indicated that it would not proceed to an election in the unit proposed by the Employer because it has no jurisdiction over employees in Pennsylvania. The Petitioner did not express whether it would proceed to elections in district-wide units, however, and there appears to be no jurisdictional impediment to its doing so. Accordingly, the Petitioner shall have

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<sup>9</sup> While that case specifically involved an employer's attempt to rebut the presumptive appropriateness of a single facility unit, the principle appears to be equally applicable in this case, which involves an employer's request for a broader unit than the multi-facility unit sought by the petition.

<sup>10</sup> Employee interchange initiated at the convenience of employees is entitled to little weight. *Bowie Hall Trucking*, *supra*, 298 NLRB at 43. Moreover, the Board has held that permanent transfers are of lesser significance than temporary transfers in determining the extent of employee interchange. *Deaconess Medical Center*, 314 NLRB 677 fn. 1 (1994).

<sup>11</sup> The fact that a division-wide unit may also be appropriate does not alter the conclusion that separate district-wide units are appropriate. *Overnite Transportation*, *supra*.

the opportunity to proceed to elections in the units set forth below. *Acme Markets, Inc.* supra, 328 NLRB at 1209, fn. 7.

## **V. CONCLUSIONS AND FINDINGS**

Based upon the entire record in this matter and for the reasons set forth above, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.
3. The Petitioner claims to represent certain employees of the Employer.
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.
5. The following employees of the Employer constitute units appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

### **Unit A**

All full-time and regular part-time physical employees, including Technicians 1, Technicians 2, Technicians 3, Technicians 4, Operations Technicians, Senior Operations Technicians, Specialists, and Senior Specialists employed by the Employer at its facilities in the Carlstadt, New Jersey District (Carlstadt and Linden), excluding District Administrators 1, District Administrators 2, Senior District Administrators, District Administrative Specialists, guards, and supervisors as defined in the Act.

### **Unit B**

All full-time and regular part-time physical employees, including Technicians 1, Technicians 2, Technicians 3, Technicians 4, Operations Technicians, Senior Operations Technicians, Specialists, and Senior Specialists employed by the Employer at its facilities in the Neshanic Station, New Jersey District (Neshanic Station, Lawrenceville, and Mt. Laurel), excluding District Administrators 1, District Administrators 2, Senior District Administrators, District Administrative Specialists, guards, and supervisors as defined in the Act.

If the Petitioner seeks to proceed to elections in the units set forth above, its showing of interest may now be inadequate because, as a result of this Decision, the Petitioner needs a showing of interest in both units. Accordingly, the Petitioner should advise the undersigned Regional Director as to whether or not it wishes to proceed to an election in one or both of the units found appropriate, and the Petitioner has 14 days from the issuance of this Decision to augment its showing of interest, if necessary. See, *NLRB Casehandling Manual (Part Two), Representation Proceedings*, Sec. 11031.2. If the Petitioner fails to submit an adequate showing of interest within this period, or to withdraw the petition, the petition will be dismissed without further order. The Direction of Election set forth below is thus conditioned on the Petitioner having an adequate showing of interest. See *Alamo Rent-A-Car*, 330 NLRB 897 (2000). In the event that a request for review is filed with respect to this Decision, the foregoing requirement will be suspended until the Board rules on the request for review.

## **VI. DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the units found appropriate above. The employees will vote whether or not they wish to be represented for the purposes of collective bargaining by the **International Brotherhood of Electrical Workers Local 94, AFL-CIO**. The date, time, and place of the election will be specified in the Notice of Election that the Board's Regional Office will issue subsequent to this Decision.

### **A. Eligible Voters**

The eligible voters shall be unit employees employed during the designated payroll period for eligibility, including employees who did not work during that period because they were ill, on vacation, or were temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, employees engaged in an economic strike, which commenced less than 12 months before the election date, who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Employees who are otherwise eligible but who are in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are: 1) employees who have quit or been discharged for cause after the designated payroll period for eligibility; 2) employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date; and 3) employees engaged in an economic strike which began more than 12 months before the election date who have been permanently replaced.

### **B. Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior*

*Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman–Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within seven (7) days of the date of this Decision, the Employer must submit to the Regional Office election eligibility lists, containing the **full** names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The lists must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the lists should be alphabetized (overall or by department, etc.). These lists may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the lists available to all parties to the election, only after I shall have determined an adequate showing of interest among the employees in the units found appropriate has been established.

To be timely filed, the lists must be received in the Regional Office, One Independence Mall, 615 Chestnut Street, Seventh Floor, Philadelphia, Pennsylvania 19106 on or before **May 6, 2004**. No extension of time to file these lists shall be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file these lists. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The lists may be submitted by mail, facsimile transmission at (215) 597-7658, or by E-mail to Region4@NLRB.gov.<sup>12</sup> Since the lists will be made available to all parties to the election, please furnish a total of **two** copies of each list, unless the lists are submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

### **C. Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of three (3) working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least five (5) working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on non-posting of the election notice.

## **VII. RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, NW, Washington, D.C. 20570-0001. A request for

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<sup>12</sup> See OM 04-43, dated March 30, 2004, for a detailed explanation of requirements which must be met when submitting documents to a Region's electronic mailbox. OM 04-43 is available on the Agency's website at [www.nlr.gov](http://www.nlr.gov).

review may also be filed electronically. For details on how to file a request for review electronically, see <http://gpea.NLRB.gov/>. This request must be received by the Board in Washington by 5:00 p.m. EDT on **May 13, 2004**

Signed: April 29, 2004

at Philadelphia, PA

/s/ Dorothy L. Moore-Duncan  
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DOROTHY L. MOORE-DUNCAN  
Regional Director, Region Four